

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

FC 2010-050661

06/01/2011

HONORABLE DOUGLAS GERLACH

CLERK OF THE COURT

C. Vigil

Deputy

IN RE THE MARRIAGE OF  
MICHAEL SAMMON

CRAIGHTON T BOATES

AND

DEBORAH SAMMON

KIILU DAVIS

DOCKET - NE  
FAMILY COURT SERVICES-CCC

**DECREE OF DISSOLUTION**

Petitioner/Father Michael Sammon filed a Petition for Dissolution of Marriage with Children (Noncovenant Marriage). The Court has considered the Petition, the Response filed by Respondent/Mother Deborah Sammon, the evidence (including testimonial evidence) and arguments of counsel presented at an evidentiary hearing held on March 17, 2011, and all other relevant matters of record.<sup>1</sup>

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<sup>1</sup> All factual findings stated here are based on the Court's evaluation of the evidence submitted, including evidence presented by way of testimony, and the Court's determination regarding the weight, if any, to be given to that evidence. *See Gutierrez v. Gutierrez*, 193 Ariz. 343, 347-48 ¶ 13, 972 P.2d 676, 680-81 (App. 1999) (stating that appellate courts "will defer to the trial court's determination of witnesses' credibility and the weight to give to conflicting evidence"); *see also O'Hair v. O'Hair*, 109 Ariz. 236, 240, 508 P.2d 66, 70 (1973) (stating that appellate courts will not review conflicting evidence, and the trial court's determination will be upheld as long as "the trial court had before it evidence which might reasonably support its action" (numerous citations omitted)); *Danielson v. Evans*, 201 Ariz. 401, 406 ¶ 13, 36 P.3d 749, 754 (App. 2001) (Pelander, J.) (stating that appellate courts will not overturn the factual findings of a trial court unless they are "clearly erroneous"). Moreover, when making its factual determinations, a Court acting in the role of fact finder may accept all, only some, or none of what a witness says. *See Callender v. Transpacific Hotel Corp.*, 179 Ariz. 557, 562, 880 P.2d 1103, 1108 (App. 1993); *see also*

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

FC 2010-050661

06/01/2011

**DISSOLUTION OF MARRIAGE.**

**THE COURT FINDS** that:

1. At the time that the petition was filed, at least one of the parties was domiciled in Arizona.
2. At least one of the parties had been domiciled in Arizona for at least 90 days before the petition was filed.
3. The conciliation provisions of A.R.S. § 25-381.09 are not applicable.
4. The parties were married on November 15, 1992. By operation of law, the marital community terminated on March 8, 2010.
5. The marriage is irretrievably broken, and there is no reasonable prospect for reconciliation.
6. The parties have two minor children: Robert Sammon (born 9/12/1993) and Stephanie Sammon (born 9/6/1997).
7. Mother is not pregnant.
8. This was not a covenant marriage.

**IT IS ORDERED** dissolving the marriage of the parties and restoring each party to the status of a single person.

**ADDITIONAL ISSUES.**

**A. Custody.**

The parties have agreed that they should be awarded joint legal custody of the two minor children, and the Court approves, finding that such agreement is in the children's best interests.

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*Nardella v. Campbell Mach., Inc.*, 525 F.2d 46, 49 (9<sup>th</sup> Cir. 1975) (quoting *Banks v. Chicago Grain Trimmers*, 390 U.S. 459, 467 (1968)).

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

FC 2010-050661

06/01/2011

**IT IS ORDERED:**

1. Mother and Father are awarded joint legal custody of Robert Sammon (born 9/12/1993) and Stephanie Sammon (born 9/6/1997).

2. Mother and Father are expected to comply with the following Custody Terms:

a. **Parental Access To Records And Information** – Both parents are entitled to have equal access to documents and other information concerning the children's education and physical, mental, moral and emotional health including medical, school, police, court and other records directly from the custodian of the records or from the other parent. A person who does not comply with a reasonable request shall reimburse the requesting parent for court costs and attorney fees incurred by that parent to force compliance with this subsection. A parent who attempts to restrict the release of documents or information by the custodian, without a prior court order, is subject to appropriate legal sanctions.

b. **Educational Arrangements** – Both parents have the right to participate in school conferences, events, and activities (including extra-curricular), and the right to consult with teachers and other school personnel.

c. **Medical And Dental Arrangements** – Both parents have the right to authorize emergency medical/dental treatment, if needed, and the right to consult with physicians and other medical practitioners. Both parents shall advise the other parent immediately of any emergency medical/dental care sought for the children, to cooperate on health matters pertaining to the children and to keep one another reasonably informed regarding the status of the children's health. Both parents shall keep each other informed as to names, addresses, and telephone numbers of all medical/dental care practitioners.

e. **Parental Communication** – It is in the children's best interests for the parents to communicate frequently regarding the well-being of their children. The parents shall use e-mail as their primary method for communication. This reduces disagreements about anything said or not said. Both parties shall maintain and regularly review their e-mail accounts. They shall each respond in a timely fashion, even if such response is merely to acknowledge the receipt of information. Each should print copies of all e-mails received and sent so that if an issue arises in the future that has been addressed through e-mail there will be written have proof as to what was communicated.

f. **Relocation** – Neither parent shall relocate the primary residence of the children to a distance greater than 50 miles from either parent's current residential location unless the parent

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

FC 2010-050661

06/01/2011

seeking relocation either secures the written consent of the other parent or obtains a court order authorizing the move before attempting to relocate.

g. **Mediation Or Conciliation Services** – Should the parties disagree about any decision that must be made for one or both children that will affect their well-being, they should ask for the assistance of the Court's Conciliation Services or otherwise ask the Court to appoint a parenting coordinator to assist them with resolving any such disagreements. Any motion, petition, memorandum, or other written request that is submitted to the Court in the future regarding child custody, parenting time, or child support that does not show compliance with this requirement will not be considered until the party making the request does comply.

h. **Deviations** – The parents are free to agree to any temporary deviations from the parenting schedule. If they agree to any permanent modification, which they are also free to do, it will not be enforceable unless it is in writing and signed by both parties. In all events, the parents will cooperate with each other on an ongoing basis to accommodate the schedules of the parents and the minor children, and the parents are to be reasonably flexible when one of them asks for a temporary modification. If a major change arises, such as moving, remarriage, or health considerations, the present schedule is no longer feasible, or the parents are unable to resolve any dispute generally, they agree to renegotiate the terms of the schedule with the aid of a parenting coordinator.

i. **Telephone Access** – Both parents shall have reasonable telephone access to the children. If either parent is out of town, the parent who is traveling shall make the call and shall be responsible for long-distance charges, if any. The children shall be given privacy during phone calls and there shall be no interference with phone access.

j. **Conduct in Presence of the Children** –

j-1. Neither parent shall expose the children to any incidents of domestic violence or extreme or hostile conflict or language. Neither parent shall expose the children to derogatory comments about the other parent or the relatives or friends of the other parent. The parents shall neither argue nor insult each other in the presence of the children or allow a third party to do so. Neither parent shall frighten the children by saying things such as the other parent is trying to take him away, the other parent does not love him, want to see him, or is interfering with visits.

j-2. The parents shall not discuss custody, parenting time or child support issues in the presence of or with the children. The parents shall ensure that the children are not exposed to any discussion about custody disputes or legal proceedings other than to assure the children that the parents are trying to work out

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

FC 2010-050661

06/01/2011

appropriate arrangements so that the children can have frequent regular access to both parents.

j-3. The parents shall not question the children about where the children want to live. The parents shall not question the children about the personal life of the other parent. The parents shall not express to the children how angry they are at the other parent, how they doubt the trustworthiness of the other parent, or how hurt or frustrated they are by the actions of the other parent.

j-4. Each parent is restrained from using or permitting others to use the children to convey oral or written messages between households. Communications should take place directly between adult household members, and the children should be protected from involvement in adult issues, such as changes in the parenting time schedule.

j-5. Both parents shall be listed as emergency contacts on any forms that require contact information such as, but not limited to, education, activities, childcare and medical providers.

j-6. During exchanges, the parties shall make every effort to be polite and respectful to each other. Interaction between the parents shall be restricted to the orderly exchange of the children. The parents are not to use the exchanges of the children or other circumstances in which the children are present to share information with one another, make request of one another, engage in negotiations, or related activities.

j-7. Neither parent shall do or say anything that might tend to alienate the affection of the children for the other parent, nor shall either parent allow any third person to do so.

j-8. Neither parent shall permit the children to be subjected to corporal punishment of any kind including, but not limited to hitting or striking with an instrument, and/or hitting or striking with a closed fist or open hand. Neither parent shall permit the children to be punished by use of anything that could cause injury, bruising, or significant pain.

j-9. Each parent shall encourage love and respect between the children and the other parent. Neither parent shall disparage the other parent or act in a way to hurt the other parent's relationship with the children.

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

FC 2010-050661

06/01/2011

**k. Decision Making Authority** – When questions that affect the children's well being arise, the parents shall address the issues amicably, in good faith, and in a spirit of cooperation that will result in what is best for the children. That means that each parent shall respect the views of the other and consider them as seriously as that parent would want his or her own views considered. If necessary, the parties should seek the opinions of professionals whose opinions may be relevant, such as teachers or medical professionals.

If, despite their best, good faith efforts, the parties cannot agree, then they are to follow what is said above and seek assistance of Conciliation Services or ask for a Court-appointed parenting coordinator. The cost shall be shared equally. If, at any time, Conciliation Services or a parenting coordinator reports to the Court that one of the parties has acted unreasonably in any respect, the Court is likely to reallocate the fee charged and require the party who was unreasonable to pay the entire fee.

**B. Parenting Time.**

The only evidence presented at the hearing regarding either party's request for parenting time was a request for a 5-2-2-5 arrangement. No evidence suggested that plan was not worthwhile or otherwise not in the children's best interests. At the same time, given Robert's age, it makes no sense to order a parenting time plan applicable to him, and the Court declines to do so.

**IT IS ORDERED:**

1. Parenting time with Robert will be at his discretion. Neither parent shall interfere in any way with what he chooses to do in that regard.

2. Parenting time with Stephanie will be on a 5-2-2-5 plan. Mother shall have parenting time with Stephanie on Mondays and Tuesdays and Father shall have parenting time with Stephanie on Wednesdays and Thursdays. The parties shall alternate the weekends from Friday to Sunday. Robert will continue to reside with Mother with reasonable parenting time awarded to Father, as agreed upon between Robert and Father.

3. No testimony was presented regarding a schedule for holidays and other special occasions and as a result, the parties will work out those arrangements between themselves. If the parties wish to submit a stipulated agreement in that regard that they wish to have made a matter of record, they may do so at any time. At the same time, the parties are encouraged to work out any adjustments on their own without Court intervention, and they are free to make any modifications they deem appropriate without asking the Court to approve.

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

FC 2010-050661

06/01/2011

**C. Child Support.**

**THE COURT FINDS:**

1. The relevant financial factors and the discretionary allowances and adjustments that the Court will allow for a calculation of child support pursuant to the Arizona Child Support Guidelines are set forth in the separately filed Child Support Worksheets, which the Court incorporates and adopts as its findings with respect to child support.

2. A deviation is appropriate regarding the oldest child and for the period of time regarding the obligation to pay child support for that child to reflect the fact that he has lived with Father very little, if at all.

**IT IS ORDERED:**

1. Father shall pay to Mother for child support the sum of \$450.00 per month, payable by Wage Assignment through the Support Payment Clearinghouse on the 1st day of each month effective April 1, 2010 and continuing through September 1, 2011. Effective September 1, 2011, Father shall pay to Mother for child support the sum of \$120.86 per month, payable by Wage Assignment through the Support Payment Clearinghouse on the 1st day of each month. To the extent that, to date, Father has paid child support in an amount less than what is ordered here, he shall make arrangements to pay the difference within the next 12 months.

An Electronic Order of Assignment will be initiated by the above-named Clerk.

2. At any time that an Order of Assignment is not paying the child support obligation in full, Father shall make full and timely payments directly to the Support Payment Clearinghouse in accordance with the "Instructions for Making Support Payments through the Clearinghouse."

3. All payments shall be made through the Support Clearinghouse by an automatic Order of Assignment issued this date. Father is advised that until such time as the Order of Assignment becomes effective, Father has an affirmative obligation to pay the child support directly to the Support Clearinghouse.

4. All obligations for child support for each child shall terminate upon a finding of this Court that the child has reached the age of 18 years, or is otherwise emancipated. If any child reaches the age of 18 years while attending high school, support shall continue to be provided during the period in which that child continues to be enrolled in high school but only until the child reaches 19 years of age. Support for special needs children may continue past the age of 18 based on a finding of this Court. Provisions for health insurance and non-insured health

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

FC 2010-050661

06/01/2011

expenses for the children, as provided for below, shall be deemed to be additional child support and shall be enforceable as such.

5. Pursuant to A.R.S. § 25-503(I), the right of a parent, guardian or custodian to receive child support payments as provided in this Order vests as each installment falls due. Each vested child support installment is enforceable as a final judgment by operation of law.

**D. Spousal Maintenance.**

The Court finds that Mother is entitled to an award of Spousal Maintenance. Father does not dispute entitlement to such an award but does dispute the amount. The Court finds that Mother is unable to be self sufficient through appropriate employment to be self sufficient at this time. A.R.S. § 25-319(A)(2).

The Court has considered all of the factors listed in A.R.S. 25-319. The Court finds that the parties shared a comfortable lifestyle. No evidence showed that they incurred significant debt, experienced financial troubles, or engaged in a lavish lifestyle during their marriage of 19 and one-half years. Mother is 44 years old and worked throughout the marriage. Mother was never employed at the level of Father's income. but nonetheless was employed in various positions. Mother has been and continues to be the primary care-provider in the family. She is at an age where there is a reasonable prospect that she can secure employment and become financially independent. To that end, she has enrolled in some college classes. In the Court's view, however, becoming financially independent will not occur quickly, and therefore, Mother will need support for a period of time.

**IT IS ORDERED:**

1. Father shall pay Mother spousal maintenance in the sum of \$2,150.00 per month on the first day of each month commencing on April 1, 2010, and continuing through April 1, 2015 (five years).

2. The obligation stated in the preceding paragraph shall terminate upon the death or remarriage of Mother except as to payment of the amount, if any, of spousal maintenance that has not been paid and is still owed as of the date of death or remarriage, or on April 1, 2015, whichever occurs first.

3. For purposes of determining each party's income tax, all spousal maintenance awarded by this Order and paid by Father to Mother shall be tax deductible for Father and shall be deemed income to Mother.



SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

FC 2010-050661

06/01/2011

4. The spousal maintenance payments shall be made through the Support Clearinghouse. An automatic Order of Assignment will be initiated by the above-named Clerk. Until that Order of Assignment becomes effective, Respondent shall be responsible for making payments through the Support Clearinghouse.

**E. Real Property.**

The evidence presented at the hearing did not provide a reasonable basis for establishing the amount of equity, if any, in the real property owned by the parties and located at 40514 North Kearny Way, Anthem, Arizona, 85086.

**IT IS ORDERED:**

1. The real property located at 40514 North Kearny Way, Anthem, Arizona, 85086, is awarded to Mother as her sole and separate property (the “Kearny Way Property”).

2. The Kearny Way Property shall be appraised within thirty (30) days from the date of the entry of this Decree. Mother shall choose the appraiser and the cost of the appraiser shall be equally (50/50) divided between the parties.

3. Mother shall use her best efforts to refinance the mortgage on the Kearny Way Property and remove Father’s name from the mortgage.

4. The property located at 3437 West. Thoreau Lane, Anthem, Arizona, 85086, is awarded to Father as his sole and separate property.

5. Given that the property located at 7852 East Mendoza Avenue, Mesa, Arizona, 85209, is titled, in part, in the name of a person not a party to this proceeding, and thus, there being no means by which the Court can order a division of that property as part of this proceeding, that asset will not be considered when determining the property division in this matter, and the parties’ interests, if any, in that property are unaffected by this Decree.

**F. Personal Property.**

**IT IS ORDERED:**

1. Except as stated in the next paragraph, the parties are awarded the personal property in their possession as their sole and separate property.

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

FC 2010-050661

06/01/2011

2. The toy chest about which there was testimony is awarded to Mother to be held in trust for Robert. Robert may direct how that property is then to be maintained or, if he desires, sold. To effect this arrangement, Father is ordered to deliver the toy chest to Mother not later than 10 calendar days after the date of this Decree.

**G. Vehicles.**

**IT IS ORDERED:**

1. Father is awarded the 2007 Ford Mustang. Any outstanding indebtedness or encumbrance on that vehicle is Father's sole and separate obligation.

2. Mother is awarded the 2010 Infiniti and, if still in her possession, the 2003 Ford Explorer. Any outstanding indebtedness or encumbrance on either of those vehicles is/are Mother's sole and separate obligation(s).

**IT IS ORDERED** that, because of the credible evidence regarding valuations of those vehicles, a payment from Father to Mother in the amount of \$8,455.00 is warranted, and judgment in favor of Mother for that amount is hereby entered.

**H. 2009 Tax Refund.**

**IT IS ORDERED** granting judgment in favor of Father and against Mother in the amount of \$2,000.00

**I. Income Tax Dependency Exemptions.**

**IT IS ORDERED** that Mother is entitled to claim the children on her federal, state, and any other tax returns until such time as such exemptions are no longer available.

**J. 2010 Tax Returns.**

**IT IS ORDERED** that the parties may file separate state and federal tax returns for 2010. Neither may insist on filing a joint return. The filing of a joint return will require mutual consent.

**K. Debts.**

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

FC 2010-050661

06/01/2011

**IT IS ORDERED**, consistent with the agreement as stated on the record at the beginning of the March 17 hearing, that each party is solely responsible for payment of all debts and other obligations incurred by that party.

**L. Insurance and Medical Expenses.**

**IT IS ORDERED:**

1. Father shall provide medical, dental, and vision insurance for the benefit of the parties' children, and he shall provide an insurance card and claim filing information/forms to Mother. All medical, dental and vision expenses incurred for the health and protection of the children not covered by insurance shall be paid 50 percent by Father and 50 percent by Mother.

2. With regard to unreimbursed medical, dental, and vision expenses, any request for payment or reimbursement of uninsured medical, dental, and/or vision costs must be provided to the other parent within 180 days after the date that the services occur. A later request for reimbursement will be allowed only upon a compelling showing that the request could not have been made within 180 days. A parent who is entitled to receive reimbursement from the other parent for medical costs not covered by insurance shall, upon request of the other parent, provide receipts or other evidence of payments actually made. The parent responsible for payment or reimbursement must pay his or her share, or make acceptable payment arrangements with the provider or person entitled to reimbursement, within 30 days after receipt of the request.

3. Both parents should use their best efforts to obtain services that are covered by the insurance.

**M. Bank Accounts.**

**IT IS ORDERED:**

1. The parties have divided their bank accounts and have stipulated that no further order with respect to those accounts is required. The Court accepts their stipulation.

2. Accounts in the name of either child shall remain in that child's name. Neither Mother nor Father may withdraw funds from or close those accounts, or otherwise take any action that would cause a reduction in the value of any such account.

**N. Retirement Accounts.**

**IT IS ORDERED:**

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

FC 2010-050661

06/01/2011

1. The following accounts are community property in which each party has a 50 percent interest.

- a. Mother's American Century IRA Rollover account.
- b. Mother's ING account.
- c. Father's American Century IRA account or, if more than one, accounts.
- d. Father's New York City Deferred Compensation Plan/NYCE IRA.

2. A Qualified Domestic Relations Order shall be prepared for each such account by Georgia Wilder, with each party being responsible for paying 50 percent of the fees for her services.

3. Mother's claim for any interest in Father's Accident Disability Pension is denied.

**O. Life Insurance Policies.**

**IT IS ORDERED:**

- 1. Each party is awarded any life insurance policy in his or her name.
- 2. Based on the evidence presented that the Court found persuasive, Mother is awarded judgment in her favor and against Father in the amount of \$7,407.60, which represents her community interest in the cash value of Father's life insurance policies.

**P. Waste.**

**IT IS ORDERED** denying Mother's claim for waste on the grounds that it was not established by persuasive evidence.

**Q. Interest.**

**IT IS ORDERED** that amounts awarded by this decree shall accrue interest at the legal rate (10 percent annually, not compounded), with the accrual of interest beginning on the date of this Decree.

**R. Indemnification.**

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

FC 2010-050661

06/01/2011

**IT IS ORDERED** that each party shall indemnify and hold the other harmless from any and all debts or other obligations designated as the responsibility of that party by the terms set forth in this Decree. What that means is this: If a creditor, including any tax authority, requires one party to pay more than the percentage or amount that this Decree allocates to that party, then that party has the right to demand immediate reimbursement from the other party. If, for any reason, that other party does not pay, then the party who paid more than what was required by this Decree may ask this Court to enter a judgment against that other party. Interest shall accrue on any such judgment at the legal rate (presently 10 percent annually) from the day that payment was first demanded.

**S. Exchange Of Information.**

**IT IS ORDERED:**

1. The parties shall exchange income information every 24 months. Such financial information shall include, but not be limited to: personal tax returns with all schedules, affidavits of financial information, earning statements and other such documentation necessary to establish or prove the income of either party. In addition, at the time of the exchange of financial information, the parties shall also exchange residential addresses and the names and addresses of their respective employers.

2. The information exchanged may not be used for any purpose other than this case. It may not be disclosed in any way to any person other than to a party's attorneys and those persons who work for or who have been retained by the attorneys to assist in this matter. The party to whom such information is provided is responsible for complying with the requirements of this paragraph, and any failure to do so (i.e., any breach of confidentiality) may subject that party to a financial penalty.

**T. Attorney's Fees.**

It is ordered denying the request for attorney's fees. Awards of attorney's fees may be denied when neither party has taken an unreasonable position. *In re Marriage of Pownall*, 197 Ariz. 577, 584, ¶35, 5 P.3d 911, 918 (App. 2000). And, even though a court may award fees, it is not required to do so. *Alley v. Stevens*, 209 Ariz. 426, 429, ¶ 12, 104 P.3d 157, 160 (App. 2004).

**FINAL JUDGMENT.**

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

FC 2010-050661

06/01/2011

**IT IS ORDERED** signing this minute entry as a formal order of this Court. Ariz. R. Fam. L. 81.

/ s / HONORABLE DOUGLAS GERLACH

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JUDGE OF THE SUPERIOR COURT

FILED: Child Support Worksheet, Exhibit Worksheet

All parties representing themselves must keep the Court updated with address changes. A form may be downloaded at: <http://www.superiorcourt.maricopa.gov/SuperiorCourt/Self-ServiceCenter>.